
THE JUDGES MUST ACCOUNT FOR THEIR ACTIONS

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ABSTRACT

Judges are the officials who have the control over the court proceedings. Judges are not just the visual icons of the courts. Indian Judicial System is a freelance body and has the discretion to make its own mindset while deciding the cases. Judiciary must strike an equilibrium with a view to regulate its function and foster neutrality among Judges while making the decisions. The Judiciary, being the vital element of the country, is likewise held accountable. Judging is a way of life rather than a career; the Judge must keep a safe distance from the parties of the case and their counsels throughout the trial of the case. A Judge may get attached with individuals and various points of view, and counsels may believe they will not be treated fairly. Judicial Accountability is a necessity nowadays. Transparency and fairness are two essential characteristics that judges, as servants of the courts, must demonstrate. The only way to remove such charges is to make the judiciary more responsible to the public.

INTRODUCTION

The word “Accountable” is defined by Oxford Dictionary as “answerable for your actions or activities and obliged to justify them when questioned.” The Indian Judicial system is a separate and impartial organ from the Executive and Legislature to eliminate the injustice to the people of the country. Justice is said to be blind and because of this, it is the totally discretionary power of the Judge to give justice, by knowing that the justice should be given to every citizen of the country. As a result, there should be a Judicial Accountability on the Judges for their verdicts or decisions taken during the case proceedings. Accountability is deemed to be the sine qua non of any democratic country because it secures the rights of the citizens and gives justice that is supposed to be fair for all.¹ It is the fact that the Indian Judicial System is a freelance body and has the discretion to make its own mindset while deciding the cases. However, the verdicts that are delivered have an effect on the people of the country for that Judges should be held accountable for their verdicts that they have made while hearing the case. As a result, the Judiciary must strike an equilibrium with a view to regulate its function and foster neutrality among Judges while making the decisions. Responsibility is facilitated through transparency. No public entity or public officials is free from the obligation, even though the method in which the accountability is enforced may fluctuate based on the environment of the office and the duties to be performed by the office holder. The Judiciary, being the vital element of the country, is likewise held accountable. However, the Judicial responsibility is not on the same scale as responsibility of the other organs like executive, legislature, or any other public body. The Indian political system is under tremendous stress. People's trust in the quality, integrity, and effectiveness of public entities has decreased substantially. People look towards the Judiciary as a last hope. But recently, in the Judicial System also things have become extremely problematic, and one can no longer claim that everything is well within the Judiciary. The Judiciary's independence and impartiality are one of the trademarks of the democratic Government system. Only an unbiased and impartial Judiciary can safeguard individual rights and provide proper justice without fear or favor.

WHY THERE SHOULD BE A STRONG JUDICIAL ACCOUNTABILITY

The Indian Judicial System is charged with the responsibility for the governance of justice via

¹ Oishikha Banerji, Need for Stronger Judicial Accountability, (Dec. 06, 2022, 12:30PM) <https://blog.ipleaders.in/need-stronger-Judicial-accountability/#Introduction>

use of the courts. Judges are the officials who have the control over the court proceedings. Judges are not just the visual icons of the courts; Judges are the flesh and blood representatives. The way in which Judges discharge their duty in their official capacity, it influences the image of the courts and the reputation of the legal system in its entirety. Judges have been highly respected and regarded as superhumans in India since olden days, but in recent times the scenario is totally different by looking at the instances which mentioned above. The people of the country are gradually losing hope in the courts and voluntarily taking the laws into their own hands. This is extremely disappointing. There is without any doubt a need to make the Judicial system responsible, as transgressions of values in Judiciary are substantially more and destructive compared to any other department of the State, as Judiciary functions as the custodian of the Constitution. The idea of transparency and accountability is not new. This is to be performed to alleviate the centralization of power into the hands of a single organ of the state, particularly in nations where the Judicial activism interferes with and invades the domains of the remaining organs. By looking all over scenarios and above-mentioned positions Judicial Accountability is a necessity nowadays. For the following reasons, we can say that there should be a strong Judicial Accountability:²

I. Variations in the demands of the citizens under a developmental state: -

India being a democratic and developing nation, is rapidly growing and the people of the country pursue more education, which is enhancing the awareness regarding their rights and responsibilities. Nowadays, the involvement of the public is also increased as it was before a decade ago. The desire to know how the things are governed in the nation must be fulfilled by enhancing responsibilities on the part of public bodies and departments, including the Judiciary.

II. Deficiency of a mechanism for restraining misbehavior of Judges:

One factor that has been highlighted in multiple Judicial pronouncements is that there are no mechanisms available to oversee the misbehavior or mistakes committed by the Judges apart from removing them through impeachment, which is itself a very lengthy process. The court in the matter of *Sub-Committee on Judicial Accountability v/s. Union of India*³ made an

² Oishikha Banerji, Need for Stronger Judicial Accountability, (Dec. 07, 2022, 03:32 PM) <https://blog.ipleaders.in/need-stronger-Judicial-accountability/#Introduction>

³ Sub-Committee on Judicial Accountability v. Union of India 1991 AIR 1598, 1991 SCR (2) 741

observation that, there is no provision in the law existing which provides the procedures for charging the Judges of High Courts and Supreme Court for misconduct during the court procedures. This kind of deficiency requires more Judicial Accountability with a view to maintain the integrity of the Judiciary.

III. The truthfulness of the Judicial System: -

The authenticity of the Constitution must be there and Judges should abide by it while making the decision or any legislation is approved by the Judiciary. With the purpose to ensure the authenticity, the Judiciary should be held responsible to demonstrate that the verdicts that they make or approve any statute that are in accordance with the Constitution of India.

IV. Awareness of the criteria of the Judges who preside in the courts: -

The qualifications of the Judges sitting in the Supreme Court of India and High Courts are shrouded in secrecy from the common public of the country. There are some instances where Judges are appointed through external connections or favoritism, which are dangerous for the Judicial system. To eliminate this situation in the upcoming future, advanced Judicial Accountability is necessary to assure that whatever the decisions are given is given with fairness and without any external influence.

V. Allocation of seats in the Judiciary to the minorities: -

Due to the prevalence of both minorities and dominant in India, the demand for reserved seats in the Judicial System in India for the weaker and underprivileged segment of the society has gained recognition. Responsibility upon the Judiciary is necessary to guarantee that such a thing occurs in the same way. The only way to accomplish this is to consider the Judicial Service exams as the sole exams for all aspirants to the Judiciary.

VI. The significance of effective performance and visibility: -

The Supreme Court of India currently includes thirty-one Judges, yet strangely, some of the verdicts of the court have resulted in the remarkable changes and modifications to the current framework. As a consequence of this system's flaws and weaknesses, the Judicial System needs to be more effective. Following that, the Indian Judicial system is the only branch of the Government that provides justice to the common public of the country. In order for the

Judiciary to efficiently execute its responsibility, transparency on the part of the Judicial system is required. It is not that transparency was missing from the system, but Judges' laxity in pronouncing verdict occurred & continues to occur. These needs enhanced Judicial transparency, as the Chief Justice of India has flatly stated that the Judiciary will be immune from the Right to Information Act, 2005.⁴

VII. Lack of provisions for the challenging the decisions of the Apex Court: -

The Constitution of India has no provisions which lays down the reviewing the verdict of the Supreme Court. Other than the Supreme Court, there is no alternative authority or body to check the Supreme Court's findings. The Judiciary, however, cannot ignore the requirement for safety, responsibility, and openness since the three levels of Government are not cooperatively sovereign. In the twenty-first century, justice not only needs to be delivered quickly, but it must also involve honesty, impartiality, and transparency on the part of the Judiciary.

WHAT SHOULD BE THERE TO ACHIEVE THE JUDICIAL ACCOUNTABILITY?

Taking the inspirations from the various instances where Judiciary, being an independent organ of the country got influenced by some or the other factors prevailing in the surrounding. Before people of the country lose their hope from the Judiciary which is the last option for them to fight or to avail their fundamental as well as legal rights which are granted to them by the constitution, Judiciary should take the necessary step and Judges being a Judicial Head, should fulfill his obligation in accordance with the law. For the proper governance of the concept of Judicial Accountability, there should be the code of ethics that a Judge should follow in his official capacity.

Ethical Standards of a Judges

1. Judicial Pronouncement must be fair: -

It is very crucial that the verdicts of the court be honest, fair and impartial. No Judicial pronouncement is honest until and unless it is given in response to an honest view developed in the nexus of the competent law and fact. However, the individual Judge's perception may

⁴ Right to Information Act, No. 22, Acts of Parliament, 2005

be inaccurate. Making an honest mistake does not mean that the whole decision is inaccurate.

2. No man can become a Judge in his/her own case: -

This is one of the very primary ethical standards. This standard does not only show where the Judge is the actual party to the court proceedings, but also covers where there is an individual interest therein. In the Judicial system, Judges must maintain a level of neutrality and distance. Judges must be unbiased and also be recognized by everyone to be balanced, as they are bound by the oath of office that they look in adjudicating the issues placed before the court in conformity with it. The Supreme Court of India has made it very evident.

3. Fair chance to all: -

When any case is coming into the court, it is the duty of the Judge to treat whoever is the party to the case fairly. Judges are the Judge for all segments of the society, he is not the Judge of any particular section or group of the society. A Judge should be least concerned about the party to the case or personalities, but only with the merits and demerits.

4. Keep the safe distance from Relatives and Social Engagements: -

Judging is a way of life rather than a career; the Judge must keep a safe distance from the parties of the case and their counsels throughout the trial of the case. A Judge may get attached with individuals and various points of view, and counsels may believe they will not be treated fairly. To avoid that sensation, a Judge should restrict his or her social gathering. Again, Judges should take extra precautions whenever he wants to attend the social occasions. The emergence of this worrisome trend can be prevented if working counsel and sitting justices avoid interacting in private on a constant schedule. Individuals in positions of authority must take precautions to ensure that people who claim to be close to them do not abuse that connection, either claimed or genuine.

In the case of *Ram Pratap Sharma v/s. Daya Nand*,⁵ issued a notice of caution stating that it is legitimate for the Judge to decline an invitation or any other accommodation from commercial groups, political parties, clubs and any other organizations that follow factional,

⁵ Ram Pratap Sharma v/s. Daya Nand, 1977 AIR 809, 1977 SCR (1) 242

religious or regional scope.

5. Media Coverage should be restricted by the Judges: -

A Judge should keep off the media platforms as much as possible. A Judge should restrict himself to express his personal views or opinions in the social media platforms on the cases which are either pending before the court or may appear for the Judicial opinion.

EVALUATION OF JUDGES WITH RELEVANT CASE LAWS

Because of the rumors in the media and any other platforms in recent times, the Judiciary has been targeted. A chain of the Judicial calumny has been increased in the recent past. To begin with the case of Chief Justice Y. K. Sabharwal,⁶ moving ahead with the scam of Provident Fund in the Ghaziabad Court at Chandigarh,⁷ and the case of Justice Sumitra Sen.⁸ Some of them emerged due to the judges' recruitment and selection process not being transparent. In most of the cases, officials of questionable integrity are selected and appointed by a Collegium of judges from the High Court and the Supreme Court in a completely secretive, temporary, capricious, and opaque manner. Regrettably, we have been exploring that all these people who come to be nominated, get affirmed, even when the Collegium finds them to have been of doubtful decency, and are not excluded even when a judge's committee identifies them charged with criminal misallocation as well as embezzlement, and even after the Chief Justice of India has recommended their removal from the post of judge.

Landmark Verdicts to hold the Judicial Accountability: -

1. S. P. Gupta v/s. Union of India

The Hon'ble Apex Court in this case⁹ The Union Government's demand to enhance security against the publications of the confidential papers to the common people of the country was dismissed. The court emphasized unequivocally that the disclosure of the information is limited

⁶ Wikipedia, https://en.wikipedia.org/wiki/Yogesh_Kumar_Sabharwal#Conflict_of_Interest_charges, (19 May 2023, 10:46)

⁷ Nagendra Sharma, What was the cash at judge's door scam?, (19 May 2023, 10:49) <https://www.hindustantimes.com/india/what-was-the-cash-at-judge-s-door-scam/story-k1naYeWS3mRWcy2VLlu6YK.html>

⁸ Sana, Allegations against Justice Soumitra Sen: Inquiry Committee Report, (19 May 2023, 10:42), <https://prindia.org/theprsblog/allegations-against-justice-soumitra-sen-inquiry-committee-report>

⁹ S. P. Gupta v/s. Union of India, AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365

to the information that is detrimental to the general public's interest and not to any other information. In this matter, the petitioner requested information concerning judicial transfers and appointments undertaken by the Chief Justice of India.

The court concluded that in these circumstances, the public's understanding of the transfer and nomination of judges is significant. This is a critical decision by Justice Bhagwati recognizing the significance of robust Judicial Accountability. The court recognized that they are responsible to the general public for responding to questions of judgments they made in the best interest of the public. Article 19(1)(a)¹⁰ The Constitution guarantees the citizens this right. The courts have not always been accountable for their decisions.

2. Mid-Day Journalist Case

There was corruption involved in the judges' decisions.¹¹ The Midday journalists were sentenced to consider going to court to publish specific evidence against one Justice who had issued a decree closing all commercial properties in and nearby Delhi's residential neighborhoods. This judgment was made after Justice's sons formed a collaboration with some well-known shopping outlets. As a result, the order given by the Justice was made with the interest of his sons in sight. Although no disciplinary action was taken by the court against the Justice, it was only when reporters were sentenced that the general public became conscious of the situation. This episode indicates that a segment of the press is scared of the judiciary's restriction of discretionary authority whenever an inquiry involving the judiciary is conducted. As a result, this type of scenario demands strong Judicial Accountability.

3. K. Veeraswami v/s. Union of India and Others

In this matter, The Hon'ble Supreme Court of India heightened the difficulty of Judicial Accountability¹². The Supreme Court ruled that no inquiry of a civil or criminal matter can be initiated by a judge of the Supreme Court or a High Court without the express consent of the Chief Justice of India. This judge's decision was clearly damaging for the entire judiciary and voiced concerns about the judicial system's impartiality. It has been incredibly uncommon for a judge to be examined as a consequence of such a verdict. As a result, the idea of Judicial

¹⁰ Article 19(1)(a) of the Constitution of India, 2021

¹¹ Court On Its Own Motion v/s. M.K. Tayal and Ors., 2007 (98) DRJ 41

¹² K. Veeraswami v/s. Union of India, 1991 SCR (3) 189, 1991 SCC (3) 655

Accountability is also eliminated. This verdict reversed the court's verdict in *S.P. Gupta v. Union of India and Others*. It has long been understood that the only means to expel a judge from service is by impeachment. However, this method has yet to be beneficial.

4. Sarojini Ramaswami v/s. Union of India, Writ Petition (Civil) 514 of 1992

In the case of *Sarojini Ramaswami v. Union of India & Ors*, famously known as the *Ramaswamy case*¹³ The Apex Court's expulsion failed miserably because of a lack of a majority of votes in the both Parliamentary Houses. Justice Ramaswamy was accused of mishandling the court's funds but he was not expelled since one of the parties refused to vote. This case demonstrates the deficiencies of the judiciary and the necessity for robust judicial accountability to eliminate such difficulties from occurring again in the future. The subsequent verdicts demonstrate that enhanced judicial accountability is essential because it secures the accurate and impartial justice administration to the people. According to great thinkers, justice must not just be given but also perceived to be delivered. As a result, in order for the court to be confident in its judgment, it must be held accountable for its decisions.

CONCLUSION

The judiciary has been entrusted with important responsibility. Transparency and fairness are two essential characteristics that judges, as servants of the courts, must demonstrate. To strengthen citizens' trust in the judiciary, the judiciary should have a stronger and more established system of accountability in order to bring clarity to decision-making. Several claims have been levelled against various Supreme Court and High Court judges, as well as the Chief Justices, alleging that they were biased in reaching a decision in a case. The only way to remove such charges is to make the judiciary more responsible to the public. Keeping the facts presented, the issues highlighted, and the examples mentioned in mind, the conclusion that can be reached is that in order to ensure justice for every citizen, the nation demands greater judicial authority.

¹³ *Sarojini Ramaswami v/s. Union of India & Ors., Writ Petition (Civil) 514 of 1992*